

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

LONNIE GREGORY,

Plaintiff,

v.

**CIVIL ACTION NO. 3:12-CV-121
(JUDGE GROH)**

**CRAIG PHELPS, SHANNA SPIKER,
and in official and individual capacity, and
their one unknown Police Officer, JOHN
DOE #1,**

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO STRIKE

On October 16, 2013, the above-named Defendants filed a Motion to Strike Plaintiff's Response to Defendants' Answer [Doc. 45] due to improper pleading under the Federal Rules of Civil Procedure. Defendants argue that Rule 7(a) of the Federal Rules of Civil Procedure allow only certain pleadings, and Plaintiff's response does not fit into any of the categories as provided in the rule. On October 17, 2013, this Court sent a Roseboro notice to Plaintiff advising him of his right to file responsive material.

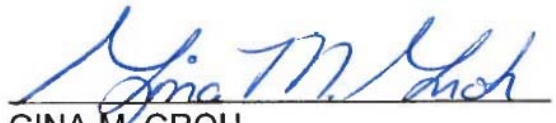
On October 22, 2013, Plaintiff filed his response stating that he came to the conclusion that he filed his response to Defendants' Answer without being ordered to do so by the Court. Therefore, he sought to withdraw his response. However, he also sought clarification of Federal Rule of Civil Procedure 7(a).

The Federal Rules of Civil Procedure provide for seven types of permissible pleadings. See Fed. R. Civ. P. 7(a). The seventh pleading, a reply to an answer, is only permissible if the court orders one. Id. The parties agree that the Court did not order Plaintiff to file a reply to Defendants' Answer. Therefore, Plaintiff's "Response" to the Answer is a "superfluous document, not provided for in the Federal Rules of Civil Procedure." Malbon v. Pa. Millers Mut. Ins. Co., 636 F.2d 936, 938 (4th Cir. 1980). Because Plaintiff's response is improper, this Court **GRANTS** Defendants' Motion to Strike and **ORDERS** Plaintiff's Response to be stricken from the record.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and to send a copy by certified mail, return receipt requested, to the *pro se* plaintiff.

DATED: October 24, 2013


GINA M. GROH
UNITED STATES DISTRICT JUDGE